BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

VALARIE HINKLEY, **Petitioner,** **v.** **DEPARTMENT OF DRIVER SERVICES,** **Respondent.**	**Docket No.: 2218342** **2218342-OSAH-DDS-ALS-75-Walker** **Agency Reference No.:** [redacted]

FINAL DECISION

I. Introduction

This matter is an administrative review of the Respondent's decision to suspend the Petitioner's driver's license, permit, or privilege to operate a motor vehicle or commercial motor vehicle in the State of Georgia pursuant to O.C.G.A. § 40-5-67.1. The hearing took place on May 17, 2022, before the undersigned administrative law judge. After considering the evidence and the arguments of the parties, the Respondent's action is **AFFIRMED** for the reasons stated below.

II. Findings of Fact

1.

On December 23, 2021, at approximately 8:20 p.m., Henry County Police Officer Robert Garcia was dispatched to a traffic incident. When he arrived, he observed a car partially in a ditch alongside a driveway.

2.

The Petitioner had been driving the car. She told the Officer that she had been attempting to turn her car around in the driveway when the car "just slid." While speaking with the Petitioner, Officer Garcia detected the odor of an alcoholic beverage coming from her breath and noted that her eyes were watery and glassy. She also stated that she had consumed a "tequila margarita" around 5 p.m.

3.

The Petitioner refused field sobriety testing and became combative with the Officer. Officer Garcia placed the Petitioner under arrest for driving under the influence of alcohol or a controlled substance and read her the implied consent notice for drivers ages 21 and over, asking her if she

would consent to state-administered testing of her blood and/or breath. The evidence did not indicate that the Petitioner was experiencing any difficulty hearing; nonetheless, she did not respond to the Officer, and he concluded that she had refused testing.

III. Conclusions of Law

1.

The Respondent bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

The Petitioner argues that the arresting officer did not have reasonable grounds to believe she was driving or in actual physical control of a moving motor vehicle while under the influence of alcohol or a controlled substance. To the contrary, she asserts that the evidence suggests that she made an understandable error while turning her vehicle around in a dark driveway. However, in addition to the evidence that she failed to safely control her vehicle, the Petitioner admitted to consuming an alcoholic beverage before driving, had the odor of an alcoholic beverage coming from her breath and exhibited watery and glassy eyes. Moreover, she became combative after speaking with the Officer and refused field sobriety testing. Accordingly, based on the totality of the circumstances Officer Garcia had reasonable grounds to believe the Petitioner was driving or in actual physical control of a moving motor vehicle while under the influence of alcohol or a controlled substance and he lawfully placed her under arrest for violating O.C.G.A. § 40-6-391. O.C.G.A. § 40-5-67.1(g)(2)(A)(i).

3.

The Petitioner next argues that the reading of the implied consent notice was insufficient because Officer Garcia did not specify whether he was asking the Petitioner for a breath or a blood test. Courts have held that an officer's failure to designate a specific state-administered test at the time of the reading of implied consent is permissible. Nagata v. State, 319 Ga. App. 513 (2013) (officer does not have to designate a specific state-administered test because defendant "was under notice that the state-administered chemical tests would be of his 'blood, breath, urine or other bodily substances'"); State v. Brantley, 263 Ga. App. 209, 211 (2003) ("[A]n officer may obtain consent for more than one chemical test and then elect which consented-to 'test or tests' will be administered."); see also O.C.G.A. § 40-5-67.1(a) ("[T]he requesting law enforcement officer

shall designate **which test or tests shall be administered initially** and may subsequently require a test or tests of any substances not initially tested") (emphasis added).

4.

Although not expressly articulated, the Petitioner's argument suggests that the aforementioned cases must be read in light of Olevik v. State, 302 Ga. 228 (2017) and Elliott v. State, 305 Ga. 179 (2019), wherein the Georgia Supreme Court established that in criminal cases the state may not "[admit] into evidence both the results of a compelled state-administered breath test and a defendant's refusal to submit to a state-administered breath test." Awad v. State, 313 Ga. 99, 99 (2022) (also prohibiting the admission of a defendant's refusal to submit to a urine test in certain circumstances) (citations omitted). However, given that "a defendant's refusal to submit to a breath test [may not] be admitted into evidence at a criminal trial," these rulings are inapplicable to the instant proceeding. See Elliott, 305 Ga. at 223 (noting that the "core function of the implied consent law remains in force" in administrative proceedings") (Boggs, J., concurring).

5.

To prevail at an administrative hearing, the Respondent must establish that "the officer informed the person of the person's implied consent rights and the consequences of submitting or refusing to submit to [the state-administered chemical test.]" O.C.G.A. § 40-5-67.1(g)(2)(C); Miles v. Ahearn, 243 Ga. App. 741, 742 (2000). The evidence demonstrated that the Officer read the Petitioner Georgia's implied consent notice for suspects age twenty one or over, which states in relevant part:

> The State of Georgia has conditioned your privilege to drive upon the highways of this state upon your submission to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's license or privilege to drive on the highways of this state will be suspended for a minimum period of one year. Your refusal to submit to blood or urine testing may be offered into evidence against you at trial.

O.C.G.A. § 40-5-67.1(b)(2).[1] At the conclusion of the reading, the Officer asked the Petitioner if she would submit to blood and/or breath testing.

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[1] Although O.C.G.A. § 40-5-67.1(b)(2) arguably refers to a single test by concluding "Will you submit to the state administered chemical tests of your (designate which test)," reading the statute in its entirety demonstrates that an officer is authorized to designate more than one test. See O.C.G.A. § 40-5-67.1(a) ("The *test or tests* required under Code Section 40-5-55 . . . . [T]he requesting law enforcement officer shall designate which *test or tests* shall be

6.

The implied consent notice informed the Petitioner that if she refused state-administered chemical tests of her blood or breath her driver's license would be suspended for a minimum of one year, and that her refusal to submit to blood testing could be offered into evidence against her at trial. The implied consent notice distinguished the consequences of refusing breath testing from blood testing; thus, whether the officer had chosen blood or breath testing the notice was "substantively accurate so as to permit the driver to make an informed decision about whether to consent to testing." Hernandez v. State, 348 Ga. App. 569 (2019) (citation omitted); Collins v. State, 290 Ga. App. 418, 420 (2008) (implied consent notice sufficient where officer did not designate specific test because notice given "was sufficiently accurate to permit . . . an informed decision about whether to consent to testing").[2] Although the Petitioner claimed that she was unable to hear the reading of the implied consent notice, the evidence demonstrated that she heard the reading and refused state-administered testing. State v. Adams, 270 Ga. App. 878, 880 (2004) (the failure to consent to testing tantamount to refusal).

7.

The Respondent met its burden and proved that the arresting officer had reasonable grounds to believe the Petitioner was driving or in actual physical control of a moving motor vehicle while under the influence of alcohol or a controlled substance, and the Petitioner was lawfully placed under arrest for violating O.C.G.A. § 40-6-391. O.C.G.A. § 40-5-67.1(g)(2)(A)(i). At the time of the request for the state-administered test or tests, the arresting officer informed the Petitioner of her implied consent rights and the consequence of submitting or refusing to submit to such test(s). Accordingly, the Respondent's suspension of the Petitioner's driver's license, permit, or privilege was proper. O.C.G.A. § 40-5-67.1.

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administered initially and may subsequently require a *test or tests* of any substances not initially tested"); O.C.G.A. § 40-5-67.1 (b) ("At the time a chemical *test or tests* are requested . . . .") (emphasis added). See State v. Hudson, 303 Ga. 348, 351-52 (2018) ("[A]ll statutes relating to the same subject matter are to be construed together, and harmonized wherever possible.") (quoting Hartley v. Agnes Scott College, 295 Ga. 458, 462 (2014).

[2] The Officer did not designate urine testing.

IV. Decision

The Respondent's decision to suspend the Petitioner's driver's license, permit, or privilege to operate a motor vehicle or commercial motor vehicle in the State of Georgia is hereby sustained and **AFFIRMED**.

SO ORDERED, this 20 day of May, 2022.

Ronit Walker

Ronit Walker
Administrative Law Judge